

Agenda Item: 8-11
Meeting Dates: December 8 and 9, 2004

(Supplemental Report, 12/3/04)

ANNUAL JOINT MEETING WITH BAY-DELTA PUBLIC ADVISORY COMMITTEE

SUPPLEMENTAL STAFF REPORT REGARDING THE DELTA IMPROVEMENTS PACKAGE

BACKGROUND INFORMATION REGARDING PROPOSED INTEGRATION OF CENTRAL VALLEY PROJECT IMPROVEMENT ACT ACTIONS WITH THE ENVIRONMENTAL WATER ACCOUNT

Summary: This staff report presents background information on the implementation of Section 3406(b)(2) of the Central Valley Project Improvement Act and on the CALFED Environmental Water Account (EWA) pertinent to a letter dated November 22, 2004 (Attachment 1) from the U.S. Bureau of Reclamation (USBR) and U.S. Fish and Wildlife Service (USFWS) to the California Departments of Water Resources (DWR) and Fish and Game (DFG). The three-year extension of the existing EWA (through 2007) and the development of a long-term EWA are both important components of the Delta Improvements Package.

Next Steps: The CALFED Implementation Memorandum of Understanding (MOU), September 2003, describes the process for interagency cooperation and public input on identification and resolution of issues related to State and Federal water project operations. This process includes the Water Operation Management Team (WOMT) and the CALFED Operations Group.

The Authority anticipates that, as described in the CALFED Implementation MOU, the EWA implementing agencies (USBR, USFWS, NOAA Fisheries, DWR, and DFG) will work with Authority staff to develop a process to fully evaluate and seek public comment on the proposed changes, and bring the matter back to the Authority for review and comment.

Background

The Central Valley Project (CVP), operated by USBR, is one of the largest water storage and conveyance systems in the world. The original primary purpose of the CVP was irrigation, with other purposes including municipal use, flood control, and assisting navigation.

Annually, the CVP provides approximately 5 million acre-feet for farms (enough to irrigate about 3 million acres, which is roughly one-third of the agricultural land in California), 600,000 acre-feet for municipal and industrial use, 410,000 acre-feet for State and Federal wildlife refuges and wetland pursuant to CVPIA, and the 800,000 acre-feet of CVPIA (b)(2) water.

A. Central Valley Project Improvement Act

In 1992, Congress passed the Central Valley Improvement Act (CVPIA). The purposes of the CVPIA were:

- (a) to protect, restore, and enhance fish, wildlife, and associated habitats in the Central Valley and Trinity River basins of California;
- (b) to address impacts of the CVP on fish, wildlife and associated habitats;
- (c) to improve the operational flexibility of the CVP;
- (d) to increase water-related benefits provided by the CVP to the State of California through expanded use of voluntary water transfers and improved water conservation;
- (e) to contribute to the State of California's interim and long-term efforts to protect the San Francisco Bay/Sacramento-San Joaquin Delta Estuary;
- (f) to achieve a reasonable balance among competing demands for use of CVP water, including the requirements of fish and wildlife, agricultural, municipal and industrial and power contractors.

Section 3406 of the CVPIA dealt with fish, wildlife and habitat restoration. Section 3406(a) added mitigation, protection, and restoration of fish and wildlife as a purpose of the CVP having equal priority with irrigation and domestic uses. Section 3406(b) provided that the Secretary of the Interior would undertake certain fish and wildlife restoration activities. Section 3406(b)(2) provides in part that the Secretary shall:

Upon enactment of this title dedicate and manage annually 800,000 acre-feet of Central Valley Project yield for the primary purpose of implementing the fish, wildlife, and habitat restoration purposes and measures authorized by this title; to assist the State of California in its efforts to protect the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary; and to help to meet such obligations as may be legally imposed upon the Central Valley Project under State or Federal law following the date of enactment of this title, including but not limited to additional obligations under the Federal Endangered Species Act. [The following sentence defined " Central Valley Project yield" for the purposes of the Act.]

The 800 TAF (thousand acre-feet) of water referred to in this section is usually referred to as (b)(2) water. Accounting for the (b)(2) water proved difficult and controversial, with differing views on what would be a proper accounting. The U.S. Department of Interior (Interior) ultimately issued a policy on the use of (b)(2) water in 1999. See Item D on following page.

B. CALFED Bay-Delta Program

In June 1994, the State and Federal governments agreed to initiate a joint process to develop long-term solutions for the problems affecting the public values in the Bay-Delta estuary ("Framework Agreement between the Governor's Water Policy Council of the State of California and the Federal Ecosystem Directorate). The role of the public was described as central in this long-term effort. This long-term effort has become the CALFED Bay-Delta Program, as described in the Principles for Agreement on Bay-Delta Standards between the State of California and the Federal government (December 1994, also known as the Bay-Delta Accord). The Bay-Delta Accord was signed by representatives for the State and Federal governments, as well as representatives agricultural, urban, and environmental stakeholder groups.

C. Water Quality Control Plan for the Bay-Delta

In 1995, the California State Water Resources Control Board adopted the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (WQCP). The WQCP included water quality standards, including flow standards, to protect fish, and adopted a narrative objective to double natural salmon production.

D. Interior's October 1999 Policy on Implementing Section 3406(b)(2)

On October 5, 1999, Interior released its policy for the accounting of (b)(2) water. It explained how it calculated "project yield." There had been disagreement over whether the 800 TAF was to be calculated based on water made available to fish, or water costs to the contractors in terms of reduced deliveries. The October 1999 policy contained the concept of "reset," which provided that where water was released from upstream reservoirs that subsequently filled, the accounting would be reset, since the amount of water available for deliveries the following year had not been reduced. Similarly, the concept of "offset" accounted for the fact that some (b)(2) export curtailments would result in reduced releases from upstream reservoirs, with more water in storage available for later deliveries. In this case, the (b)(2) account would only be charged for the actual reduction in deliveries. Offset and reset made more water available for the USFWS, in cooperation with DFG, to manage for fish than would have been available by simply adding up the total amount of acre-feet of fish actions taken.

Finally, the policy placed a limit on the amount of (b)(2) water that would be applied to meet the CVP's obligations under the 1995 WQCP at 450 TAF. If WQCP costs exceeded 450 TAF, the excess would be an obligation of the project. This guaranteed that the fishery agencies would have at least 350 TAF of "discretionary" water to manage for fish. Many parties disagreed with the October 1999 policy, and both CVP contractors and environmental groups challenged it in Federal District Court in Fresno.

E. Record of Decision of CALFED Bay-Delta Program

In August, 2000, the Federal CALFED Agencies and the Resources Agency and California Environmental Protection Agency signed the Record of Decision (ROD) for the CALFED Bay-Delta Program, approving the CALFED Bay-Delta plan. The plan included the Multi-Species Conservation Strategy (MSCS) Conservation Agreement, and the USFWS and NOAA Fisheries programmatic biological opinions, which collectively provide a commitment (subject to specified conditions and legal requirements) that there will be no reductions, beyond existing regulatory levels, in CVP or State Water Project Delta exports resulting from measures to protect fish under Federal Endangered Species Act (FESA) and California Endangered Species Act (CESA). This commitment is based on the availability of three tiers of assets described below.

Tier 1 is provided by existing regulation and State and Federal water project operational flexibility, and consists of the biological opinions from USFWS and NOAA Fisheries, the 1995 WQCP, and the full use of 800 TAF supply of (b)(2) water pursuant to Interior's October 1999 policy. The description of the (b)(2) water in the CALFED ROD includes minor modifications to the offset and reset provisions in the October 1999 policy (which constrained (b)(2) use and reduced impacts to CVP exporters), and also directs the appropriate agencies to develop a strategy to deal with the rare circumstances when the CVP obligation under the 1995 WQCP exceeds the 450 TAF annual cap for use of the (b)(2) water.

Tier 2 consists of EWA assets combined with the benefits of the Ecosystem Restoration Program, and is an insurance mechanism that will allow water to be provided for fish when needed without reducing deliveries to water users. The EWA provides for the protection and recovery of fish beyond water available through existing regulatory actions related to project operations, and is supplemental to the baseline level of protection ("Tier 1").

Tier 3 is based on the commitment and ability of the agencies to make additional water available should it be needed to meet ESA requirements to avoid jeopardy of listed species.

F. Pertinent U.S. District Court Rulings on Accounting for (b)(2) Water

On October 19, 2001, Judge Oliver Wanger issued a Memorandum Decision and Order ruling, among other things, that Interior's decision to credit a maximum of 450 TAF of water used to satisfy the WQCP and post-CVPIA Endangered Species Act requirements against the 800 TAF of (b)(2) was arbitrary and violated Section 3406 (b)(2) of the CVPIA. The court held that water used to meet WQCP or post-CVPIA ESA requirements "is an additional (b)(2) purpose and must be charged against the 800 TAF (b)(2) mandate if so used." (Emphasis in court opinion.) The court stated that if it were left to Interior's "discretion" whether or not to count CVP yield used for such (b)(2) purposes, "the annual 800 TAF cap would be illusory." On February 5, 2002, Judge Wanger issued a supplemental decision that the use of offset and reset was unlawful, arbitrary and capricious. He opined that the

CVPIA “mandates that 800,000 AF of CVP yield, no more and no less, is to be annually dedicated to and managed for (b) (2) purposes.” He concluded that offset and reset actually resulted in more than 800 TAF being dedicated to (b)(2) purposes in certain water years. He issued a Final Partial Judgment on Accounting Issues on March 20, 2002 incorporating the earlier rulings. Both water contractors and environmental groups appealed.

G. Interior’s May 2003 (b)(2) Policy

Following Judge Wanger’s rulings, but before the Ninth Circuit Court of Appeals ruled on the matter, Interior issued a draft revised (b)(2) policy on December 18, 2002, and accepted public comments until February 3, 2003. Interior issued its Final Decision on Implementation of Section 3406(b)(2) on May 9, 2003.

The May 2003 policy established the accounting period for determining the use of the annual (b)(2) allocation as October 1 through September 30, explaining that this period “is consistent with the life cycle of most of the salmon and steelhead that spawn in Central Valley rivers and streams, it contributes to meeting the Anadromous Fish Restoration Program (AFRP) doubling goals, and it promotes the efficient use of the 800,000 acre-feet for the primary purpose of implementing the fish, wildlife, and habitat restoration measures authorized by the CVPIA.” The policy provided that the USFWS would target using approximately 200 TAF of (b)(2) water in October through January for fishery purposes. The proper accounting period had been the subject of many of the comments on the draft May 2003 policy.

Consistent with the District Court rulings, the new policy also eliminated the offset, reset, and 450 TAF cap on water used for WQCP purposes, and charged all water used to meet WQCP obligations and the CVP’s post-1992 ESA obligations against the annual (b)(2) allocation at the time the cost is incurred. The fisheries agencies have acknowledged that the new policy provides less water for fish than anticipated in the CALFED ROD, but found in the 2002, 2003, and 2004 water years that there was sufficient water available, primarily through a combination of fortuitous hydrologic conditions, some restraint in actions to protect fish, and better coordination of b(2) and EWA supplies to maintain the regulatory commitments to CVP and SWP exporters.

Finally, the May 2003 policy also contemplated coordination between uses of (b)(2) water and other actions for the protection of fisheries. “Interior will use the B2IT [B2 Interagency Team], the EWA Team and the WOMT [Water Operations Management Team] to coordinate the (b)(2) fishery action plan and (b)(2), (b)(1), (b)(3) and EWA operations with other operational programs or resource-related aspects of Project operations. The WOMT will coordinate with the CALFED Operations Group, a stakeholder forum.”

H. Decisions by the Ninth Circuit Court of Appeals

On June 3, 2003, the Ninth Circuit Court of Appeals issued a short, unpublished opinion upholding the District Court's rulings on calculating CVP yield and prohibiting use of the offset and reset accounting techniques. However, the Ninth Circuit held that the District Court [Judge Wanger] had erred in concluding that Interior lacked discretion to specify what portion of the 800 TAF of project yield set aside under section (b)(2) may be used for water quality and Endangered Special Act purposes. (*Bay Institute of San Francisco, et al v. United States of American, et al.*, Case Co. 02-16041.)

In a Memorandum issued December 17, 2003, Interior provided further guidance regarding implementation of Section 3406(b)(2), in light of the June 3, 2003 Ninth Circuit ruling. The guidance states that the October 1 through September 30 accounting period described in the May 9, 2003 decision allows Interior to implement actions that effectuate the "hierarchy of purposes" referred to in the Ninth Circuit decision. The guidance provides that USBR and the USFWS will start each year with targets of up to 300,000 acre-feet of (b)(2) water annually for high priority fish and wildlife actions, and a target of up to 500,000 acre feet to help meet WQCP and ESA obligations. "This guidance does not establish caps but assures that priority actions are carefully weighed against the standards in the WQCP designed for fish and wildlife benefits."

On January 23, 2004, the Ninth Circuit issued an amended opinion. The amendment modified the paragraph of the earlier opinion dealing with the use of water for WQCP and ESA purposes. The amended ruling reads as follows:

The district court erred in concluding that Interior lacks discretion to refrain from crediting the amount of Project yield actually used for any (b)(2) purpose against the designated 800,000 acre feet of Project yield. To hold otherwise would defeat the primary purpose for which the 800,000 acre feet were designated—fish, wildlife, and habitat restoration. Section 3406 (b)(2) provides that the "primary purpose" to which the 800,000 acre feet should be dedicated is the implementation of "fish, wildlife, and habitat restoration purposes authorized by this title ...". Section 3406(b)(2) also provides that the 800,000 acre feet may be used to "help" meet obligations under the Endangered Species Act and to "assist" in meeting water quality standards. If Interior were required to deduct some or all of the water it uses for water quality and Endangered Species Act purposes from the (b)(2) dedication, the water needed for implementation of the Improvement Act's restoration mandate could be relegated to a secondary role, or perhaps no role at all. Such a scenario would directly conflict with Interior's mandate to give effect to the hierarchy of purposes established in Section 3406(b)(2).

I. Developments regarding the Environmental Water Account

During 2004, the EWA implementing agencies reviewed the first four years of operations of the EWA and agreed to extend it for another three years, until December 2007.

The EWA agencies are now considering whether to undertake a long-term EWA beyond 2007. The three-year extension of the existing EWA and the long-term EWA are both part of the Delta Improvements Package. The purposes, operations, and size of a long-term EWA are not yet determined. The long-term EWA will be analyzed in an Environmental Impact Statement/Environmental Impact Report that will be prepared before it is approved.

A long-term EWA, or something like it, has been assumed in USBR's Operations Criteria and Plan, and in the planning for the South Delta Improvements Project (8500 cfs pumping at Banks Pumping Plant and related actions).

J. November 22, 2004 Letter from Department of the Interior to California Department of Water Resources and Department of Fish and Game

See Attachment 1.

Next Steps

The proposals described in Interior's November 22 letter may have significant implications on several key elements of the CALFED Program, including the Finance Plan, the Delta Improvements Package, the Environmental Water Account, and the program-level regulatory commitments.

The Authority anticipates that, as described in the CALFED Implementation MOU, the EWA Implementing Agencies (USBR, USFWS, NOAA Fisheries, DWR, and DFG) will work with the Authority staff to develop a process to fully evaluate and seek public comment on the proposed changes, and bring the matter back to the Authority for review and comment.

Potential issues that need to be addressed include:

- What are the potential benefits and costs of the proposed changes, and have they been modeled?
- Does the proposed coordination between (b)(2) and EWA add to or expand the purposes of the EWA as set forth in the ROD?
- How often would EWA be required to cover additional actions? What would be the range of annual water cost to EWA, particularly the frequency of high cost years? What would be the cost in the maximum year? Are there savings to EWA in some years? Does this trigger a change in the environmental documentation required to support the EWA?

- Is it realistic to expect that there will be sufficient funding or water provided to allow the EWA to cover the costs of fish actions now covered by (b)(2) supplies? What are the consequences for the program if additional funds or water are not made available to implement the proposed changes?
- Are there other alternatives that have been evaluated or should be considered in addressing the issues raised in DOI's letter?
- What are the impacts of the proposed change in (b)(2) policy with respect to the accounting period? Would they require changes to the biological assessment and biological opinions recently issued by DOI as part of its OCAP update?
- How do the proposed changes address the Circuit Court's Opinion regarding the use of (b)(2) water for water quality standards, ESA requirements, and the primary purposes authorized by the CVPIA?
- Would the proposed changes be reflected in the South Delta Improvement Project EIS/EIR (draft scheduled for release in the spring 2005)?
- Would the proposed changes require the agencies to re-initiate consultations on the program-level regulatory commitments (which were just extended in September 2004 for an additional three years)?
- Is there broad-based support among the agencies, stakeholders, and elected officials to pursue these proposals?

List of Attachments

Attachment 1 – Letter from the U.S. Department of Interior to Department of Water Resources and Department of Fish and Game, dated November 22, 2004

Attachment 2 – Letter from The Bay Institute

Attachment 3 – Letter from 22 environmental groups to DWR and DFG, dated December 1, 2004

Attachment 4 – Contra Costa Times article dated December 2, 2004

Attachment 5 – The Sacramento Bee article dated December 2, 2004

Contact

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United States Department of the Interior



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IN REPLY
REFER TO:
MP-100

Lester Snow
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Ryan Broddrick
Director, Dept. of Fish and Game
State of California
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Re: Integration of CVPIA Actions with the Environmental Water Account

Dear Directors Snow and Broddrick:

In the decade since the Principles of Agreement on Bay-Delta Standards between the State of California and the Federal Government (the Bay-Delta Accord) was signed, significant progress has been made in reducing the conflicts between water project operations and fisheries protection and restoration. There are four significant developments that have made this progress possible: first, the investment of \$1 billion in ecosystem improvement through the Central Valley Project Improvement Act (CVPIA), CALFED's Ecosystem Restoration System Program and other programs; second, the creation, dedication and management of new water supplies for the protection of fishery resources; third, the sophisticated interaction and understanding among water project operators and biologists from the fishery agencies; and, fourth, the continued healthy and robust collaboration and communication among the CALFED agencies and stakeholders.

This letter proposes a policy to move forward with continual improvement in the management of water available for the protection and restoration of fisheries resources in the Central Valley of California. Specifically, we propose to take two related actions: (1) We intend to modify the manner in which Section 3406(b)(2) of the Central Valley Project Improvement Act is implemented to assure that no more than 800,000 acre-feet of water is used in any year for the primary purposes of the Act, consistent with existing law. (2) We propose in cooperation with the State to integrate operations of the Environmental Water Account with CVPIA implementation to assure that key fisheries continue to recover consistent with the goals of the CALFED Record of Decision. Consistent with the CALFED solution principles, we intend that the more efficient and effective use of these resources will benefit both our fisheries and the reliability of the water management infrastructure.

For many years, the manner in which the Department of the Interior (Interior) has implemented Section 3406(b)(2) of the CVPIA has been challenged by many groups. Most recently, the Ninth Circuit Court of Appeals issued an opinion that, among other things, affirmed that Interior may only use 800,000 acre-

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feet of Central Valley Project (CVP) water for the "primary purpose" of implementing the "fish, wildlife, and habitat restoration purposes authorized by [the CVPIA]."

Interior implements its obligation under b(2) as described in the "Decision on Implementation of Section 3406(b) (2) of the Central Valley Project Improvement Act," which was released May 9, 2003. Under that decision, and consistent with the court's interpretation of b(2), CVP water used for fish restoration actions, post -1992 Endangered Species Act actions, and 1995 Water Quality Control Plan (WQCP) actions are fully credited against the Interior's (b)(2) obligation. However, Interior must ensure that the May 9th Decision is not implemented in a manner that results in more than 800,000 acre-feet of CVP water being used for the primary fish, wildlife, and habitat restoration purposes authorized by the CVPIA.

There exists some confusion concerning whether 1995 WQCP actions must be credited against Interior's (b)(2) obligation. Some interested groups have correctly observed that Interior has the discretion to count, or not to count, CVP water used for water quality actions against the 800,000 acre-feet. The 1995 WQCP prescribes numerous actions that were developed in 1994 by Interior, working in consultation with the state, to help restore Delta fisheries, including anadromous fish. In fact, these fishery actions were included in the 1995 WQCP at the request of Interior and other signatories to the Bay-Delta Accord. Counting CVP water used for 1995 WQCP fishery actions, which further the CVPIA's primary restoration purposes, toward Interior's (b)(2) obligation is consistent with the priority of uses prescribed by the Act.

To avoid the potential of exceeding (b)(2)'s 800,000 acre-feet limitation, while at the same time providing equivalent levels of fishery restoration contemplated by the CALFED Record of Decision, Interior proposes to more thoroughly coordinate implementation of sections 3406(b)(2), 3406(b)(1), 3406(b)(3), and the Environmental Water Account. Specifically, we propose that the EWA be managed in coordination with CVPIA sections 3406(b)(1) and 3406(b)(3) to cover CVP water costs of the fish restoration actions, post-1992 ESA actions, and the 1995 WQCP fishery actions in excess of 800,000 acre-feet; provided that aggregate annual water costs of the 1995 WQCP fishery actions in excess of 800,000 acre-feet will not be covered by the EWA. To accomplish this, we seek the continued cooperation of the Department of Water Resources and the Department of Fish and Game, the state agencies responsible for managing the State Water Project, fishery resources and managing their responsibilities associated with the EWA.

As we have discussed, the rules that are used to account for CVP water credited toward Interior's (b)(2) obligation and water used by the EWA differ in a number of respects. Chief among these differences is that water released from storage to implement fishery actions upstream under (b)(2) is counted against the 800,000 acre-feet even if the reservoir from which water was released subsequently refills, while EWA debt in a reservoir is extinguished if the reservoir refills.

To avoid an adverse impact on EWA that might result from the integration of EWA with Section 3406(b)(2), Interior will propose a revision of the accounting period for actions taken to implement (b)(2). Specifically, we propose to revise the May 9th Decision to provide for a January 1 to December 31 accounting period and circulate the revised policy for public comment. This revision would mean that if EWA were used to carry out an upstream fishery action in October, November, or December, any obligation with respect to a decrease in storage would be extinguished as a result of refill. In addition, our experience indicates that a (b)(2) accounting period from October 1 to the succeeding September 30 creates uncertainty in forecasting fishery actions under (b)(2). Therefore, this change in the accounting period

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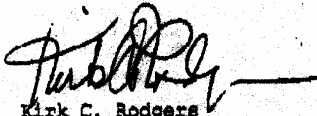
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would add flexibility to the implementation of (b)(2), and could add flexibility to the management of EWA by facilitating transfers of (b)(2) water to EWA.

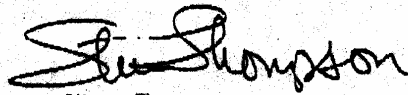
We are committed to work with your agencies to develop and implement, on a concurrent basis, a plan to finance the EWA. This includes securing assets (money, water, storage, operational changes, etc.) for the EWA to effectively meet the purposes for which it has been established.

We look forward to working with you on these proposals in furtherance of CERP's continual improvement objectives.

Sincerely,



Kirk C. Rodgers
Regional Director
Bureau of Reclamation
Mid-Pacific Region



Steve Thompson
Manager
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YC Keith

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CALIFORNIA BAY-DELTA
AUTHORITY

November 29, 2004

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Ryan Broddrick, Director
Department of Fish and Game
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RE: INTEGRATION OF CVPIA ACTIONS WITH THE EWA

Dear Directors Snow and Broddrick:

We are writing in regard to the November 22, 2004, letter from the U.S. Department of the Interior to your agencies proposing changes in the management of the 800,000 acre-feet of water dedicated to fish, wildlife and habitat restoration purposes pursuant to Section 34069b)(2) of the Central Valley Project Improvement Act (CVPIA) and of the CALFED Environmental Water Account (EWA). The Bay Institute is concerned that Interior's proposals rely on assumptions that are not consistent with the CVPIA and recent court rulings on use of (b)(2) water; that violate state and federal commitments in the CALFED Record of Decision; and that overstate costs and omit credits that would reduce or eliminate the occurrence of years when use of (b)(2) water actually exceeds 800,000 acre-feet. Implementing the proposed changes would exacerbate existing problems in achieving restoration goals and ensuring that the EWA has sufficient resources to protect and recover endangered fish species. We urge your agencies to reject both these proposed changes and the underlying assumptions.

Interior's proposed changes are based on its current policy for allocating (b)(2) water, which does not comply with the June 2003 and January 2004 9th Circuit Court of Appeal rulings regarding hierarchy of purpose.

Interior's proposed changes are premised on the assumption that all 1995 Water Quality Control Plan costs will be credited against (b)(2), and that implementing other fish restoration actions results in combined costs that exceed 800,000 acre-feet. Interior is unable to justify – and the record in implementing the CVPIA does not support – its sweeping assertion that “counting CVP water used for 1995 WQCP fishery actions, which further the CVPIA's primary restoration

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purposes, toward Interior's (b)(2) obligation is consistent with the priority of uses described in the Act."

In fact, the CVPIA's mandate in using (b)(2) water is to implement the fish, wildlife and habitat objectives and measures developed pursuant to the Act. Furthermore, the priority of uses described in the Act – and particularly in Section 3406 – is clearly focused on anadromous fish species and on a threshold of restoring (rather than stabilizing and enhancing) fish, wildlife and habitat. The 1995 WQCP fish and wildlife objectives are critical measures for protection of the Bay-Delta estuary, but not all of these requirements are primarily directed at anadromous fish and arguably none rise to the level of restoration. (The exception is the narrative salmon protection objective, identical to the CVPIA doubling goal, but the state does not include this requirement in any water rights permits. Instead, ironically, California relies on Interior's implementation of the CVPIA to achieve the objective, while Interior uses its (b)(2) assets to meet its WQCP obligations. The phrase "Catch-22" aptly summarizes this situation.)

The small remnant of (b)(2) water that is left over after WQCP costs and Endangered Species Act take-related actions are credited - only about a quarter of the total - is insufficient to achieve the Act's restoration and doubling goals. In recent years, it has been primarily used to stabilize flows in a few Central Valley streams to prevent normal CVP operations from further degrading habitat conditions and killing salmonids (see: The Bay Institute, Year in Water 2003, p. 10, attached). By proposing to shift the beginning of the (b)(2) accounting period from October 1 to January 1, Interior renders implementation of these upstream fishery actions last in priority after crediting WQCP and ESA costs earlier in the calendar year. Conveniently, this shift would also downplay the fact that it is Interior's decision to fully credit WQCP actions that could drive total (b)(2) costs to exceed 800,000 acre-feet and that it is the crediting of these costs that the EWA would actually be subsidizing. The end result of Interior's proposed changes would be to allow the EWA to subsidize Interior's decision to fully credit WQCP costs by transferring to the EWA the legal burden of implementing the fishery protection actions (the only portion of (b)(2) water that is currently allocated to implementing the purposes and programs developed pursuant to the CVPIA, rather than simply complying with the 1995 WQCP and Reclamation's ESA permits).

Given its failure to achieve the CVPIA's anadromous fish doubling deadline, Interior would be justified in crediting none of the WQCP and ESA costs, instead dedicating the entire (b)(2) account to new primary purpose restoration actions. At the least, properly allocating a significantly greater proportion of (b)(2) water for primary purpose restoration actions would reduce the infrequent occurrence of years when 800,000 acre-feet is actually exceeded, while complying with the CVPIA and more effectively achieving the Act's (and California's) restoration purposes, including anadromous fish doubling. If the State of California is truly dedicated to ecosystem restoration and to discharging its public trust

*Directors Snow and Broddrick
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responsibilities, then it must reject Interior's current (b)(2) policy as the basis for integrating CVPIA actions and the EWA.

Interior's proposed changes would also violate its own commitments – and the State of California's – in the CALFED Record of Decision.

Implementation of the CALFED Environmental Water Account is specifically conditioned on being supplemental to what the ROD calls "Tier 1" protections, e.g., existing regulatory and statutory obligations. "The EWA will provide for fishery protection actions that are supplemental to a baseline level of protection established by an existing set of regulatory programs" (ROD, p. 55).

Full use of the 800,000 acre-feet of (b)(2) water is specifically identified as part of the baseline level of protection, which the EWA (as part of Tier 2) must augment. In addition, the ROD commitment was based on an assumption that no more than 450,000 acre-feet of WQCP costs would be credited to the (b)(2) account, ensuring that a significant bloc of (b)(2) water would be available as a regulatory tool for achieving restoration purposes in Tier 1. Yet Interior is proposing that the EWA subsidize (b)(2) fish actions which meet the primary purpose of the CVPIA, and which have priority over other non-restoration actions (which Interior is not required to implement using (b)(2) water and whose full crediting reduces the amount of water below the amount included in the ROD to meet regulatory obligations under Tier 1). Interior's proposed changes would enlarge the gap between Tier 1 as established in the ROD and the actual level of protection provided by the CALFED agencies.

The EWA is a central component of the ESA permits for the CVP and SWP Delta export pumping operations. Violating the ROD's conditions for the EWA – which include Tier 1 as a precondition – in effect invalidates these permits. Even if Tier 1 commitments were being met, however, the EWA's ability to meet its obligations to protect and recover endangered fish species – already in question – would be seriously undermined if it is also expected to assume significant new commitments to subsidize (b)(2) fishery actions. To date, the EWA has acquired on average only about one-half to three-quarters of the water supplies that were anticipated in the ROD to be necessary to protect and recover endangered fish species, and funding has also fallen short of ROD targets. In addition, incidental take limits for winter-run and spring-run chinook salmon and for steelhead have been violated even with the EWA in place to prevent such occurrences.

The CALFED agencies are considering adding mitigation for increased export pumping (e.g., 8500 cfs) to the current list of EWA obligations, meaning that EWA assets will be stretched even further. Reliable long-term financing of the EWA at adequate levels to support current or pending obligations is highly uncertain given decreases in public revenue streams and impediments to new user fees and surcharges. There is no reason to expect that the EWA will be able

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to meet new (b)(2) obligations, let alone fully discharge its current or pending obligations. Adding new obligations that will cost additional millions of dollars – potentially as much as half of the current EWA budget in some years – when existing and pending EWA assets and financing are not fully secured is irresponsible and destabilizing, to say the least.

If the State of California is serious about honoring its commitments as a signatory and implementer of the ROD, it must act to ensure that Tier 1 regulatory requirements and Tier 2 permitting conditions are fully satisfied, rather than proceeding with changes to integrate (b)(2) and the EWA that would further erode the ability to meet either its Tier 1 or 2 commitments.

Interior's accounting may drastically overstate (b)(2) costs and omit (b)(2) credits.

Section 3406(b)(1)(B) authorizes Interior to re-operate the project to assist in achieving the restoration goals before using the dedicated (b)(2) yield or acquiring additional (b)(3) water purchases. Both the Bay Institute and Environmental Defense have identified several instances in which actions that were accomplished through re-operation were charged against (b)(2). According to Environmental Defense, as much as 180,000 acre-feet in 2002 and 350,000 acre-feet in 2003 were incorrectly charged to the (b)(2) account (see: ED, November 2, 2004, letter, attached).

While Interior is concerned about offsetting costs in excess of 800,000 acre-feet, it does not appear to be so concerned about crediting unused (b)(2) water. In effect, Interior zeroes out (b)(2) at the end of the water year, even though some analyses indicate that there are a number of years in which less than 800,000 acre-feet is actually used. Section 3408(d) authorizes Interior to bank all or part of the water used for fish and wildlife in project facilities. Yet Interior has taken no steps to reserve storage in its facilities in order to carry over the increment of unused (b)(2) water for use in subsequent years. This carryover credit could be especially important in years when (b)(2) costs truly do exceed 800,000 acre-feet. A (b)(2) banking policy would also be far more cost-effective than securing additional water supplies or funding for EWA assets.

In order to ensure that Interior is managing its (b)(2) account efficiently and not overstating costs (particularly in situations when Interior asserts that more than 800,000 acre-feet has been used in a given year), the State of California should use its experience in managing water supplies and accounting for water use to review Interior's accounting rules for use of (b)(1)(B) and (b)(2) water and their application, and to identify more cost-effective opportunities to bank water for CVPIA purposes. Such an evaluation is essential before California considers any proposed changes to management of the EWA.

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Interior's decisions in implementing Section 3406(b)(2) are not just Interior's business. These decisions have adversely impacted the State of California's ability to meet its commitments under the ROD and its own obligations to achieve fish, wildlife and habitat restoration. The proposed changes would go even further in adversely affecting California's interests in managing the Bay-Delta system.

Thank you for considering our concerns regarding Interior's proposed policy changes. We look forward to working with you to protect California's interests in managing water supplies for environmental purposes and achieving the ROD's regulatory commitments and ecosystem restoration targets.

Sincerely,



Gary Bobker
Program Director

Attachments (e-mail only):

The Bay Institute. 2004. The Year in Water 2003.
Environmental Defense. November 2, 2004. Letter to Kirk Rodgers, USBR, and
Steve Thompson, USFWS.

Cc: Sen. Dianne Feinstein
Sen. Barbara Boxer
Rep. George Miller
Kirk Rodgers, USBR
Steve Thompson, USFWS
Gary Hunt, CBDA
Patrick Wright, CBDA

**Natural Resources Defense Council
Butte Environmental Council
California League of Conservation Voters
California Sportfishing Protection Alliance
California Trout
Clean Water Action
Defenders of Wildlife
Deltakeeper
Environmental Defense
Friends of the River
Friends of the Trinity River
Marin Conservation League
Mono Lake Committee
Pacific Coast Federation of Fishermen's Associations
Planning and Conservation League
Public Citizen
Sacramento River Preservation Trust
San Francisco Baykeeper
Santa Clara Valley Audubon Society
Save San Francisco Bay Association
Sierra Club California
Southern California Watershed Alliance**

December 1, 2004

Lester Snow, Director
Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814

Ryan Broddrick, Director
Department of Fish and Game
1416 Ninth Street
Sacramento, CA 95814

Re: Proposed Weakening of CVPIA Environmental Protections

Dear Mr. Snow and Mr. Broddrick:

We are writing regarding a letter, dated November 22, addressed to both of you from Kirk Rodgers and Steve Thompson. The letter is entitled "Integration of CVPIA Actions with the Environmental Water Account," but it appears to be principally a proposal to weaken implementation of Section 3406(b)(2) of the Central Valley Project Improvement Act (B2). Although we agree that CVPIA actions should be coordinated with the EWA, it is both unwarranted and unrealistic to ask the EWA to take on some of the obligations of the CVPIA, as the letter suggests.

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As you know, the important B2 provision devotes 800,000 acre-feet of CVP water annually to the primary purpose of ecosystem restoration, particularly the restoration of anadromous fish. Under the Interior proposal, the availability of CVPIA water to restore anadromous fish would be further diminished. We are deeply concerned that this proposed rollback could have serious impacts on the Bay-Delta ecosystem and on the CALFED program. It is a painful irony that the Department of Interior has released a proposal that would be so damaging to CALFED, just as Congress has authorized full federal participation in the program.

We have attached a letter, dated October 13, from the environmental community regarding the development of the OCAP. This letter was discussed extensively at the last Bay-Delta Authority (BDA) meeting. Please note that this letter specifically refers to our concern regarding rumors of a proposed rollback of the B2 policy. At that meeting, Deputy Assistant Secretary Peltier indicated that he was not aware of any proposal to rollback the B2 policy. Unfortunately, it is now clear that such an effort was, by that date, well under way. There was a consensus at the BDA meeting that state and federal agencies must do a much better job of involving the CALFED process and stakeholders other than their contractors. The new proposed B2 rollback will be a key test of this commitment. Unfortunately, the November 22 Interior letter fails to discuss any role for the CALFED program.

Although the November 22 letter is not clearly written, it appears to be similar to a proposal that has been under development for several months in confidential discussions between the Bureau and CVP contractors. Although that document has not been publicly released, we have obtained a copy. Despite a long history of interest in this issue, none of our organizations have been invited to participate in discussions regarding either of these documents.

The primary goal of this proposal appears to be to turn the restoration priority of the CVPIA on its head. The CVPIA dedicates the B2 water to the "primary purpose" of "fish, wildlife and habitat restoration." The existing B2 policy dedicates "approximately 200,000 acre-feet" of this B2 water to fishery restoration actions on upstream tributaries (May 9, 2003 DOI B2 Policy, p. 4). (It is important to note that, as discussed below, we do not believe that the existing policy dedicates enough water to the primary purpose established by the CVPIA.) Thus, these upstream restoration actions are established as a priority, although the policy does allow some B2 water to be applied to compliance with the State Board's Bay-Delta Water Quality Control Plan. The November 22 proposal and the related confidential draft proposal, however, appear to establish the WQCP as the top priority for the use of B2 water and restoration as the lowest priority. The result of this proposed change in the B2 policy could be that, in some years, hundreds of thousands of acre-feet of B2 water would no longer be available to implement restoration actions.

We strongly oppose this proposal, which contains serious problems and raises important questions for your agencies.

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The proposal would violate state and federal requirements that CALFED develop a balanced program. State and federal law require the CALFED Bay-Delta Program to develop a balanced program to achieve the co-equal objectives of improved ecosystem health, water quality and water supply reliability. Several federal actions, however, threaten to redirect water and funding dedicated to fisheries restoration in order to benefit south of Delta water users. These actions include: the current proposed B2 rollback; the May 9, 2003 B2 rollback; the environmental rollbacks contained in the OCAP; as well the proposal to use federal CVPIA restoration funds to help pay for compliance with the ESA. The ROD promises multiple benefits from the CALFED program. The clear pattern of rollbacks in the past year and a half, however, appears to be designed to increase CVP deliveries by weakening environmental protection and restoration programs. It is inconceivable that the CALFED program could be found to be in balance when agencies are weakening one program area to benefit another.

The proposal would violate CALFED ROD requirements regarding the EWA. The proposal appears to suggest that when, as a result of this rollback, Interior refused to use B2 water to implement fishery restoration actions, those actions could be provided by the EWA. The ROD clearly states that “(t)he EWA has been established to provide water for the protection and restoration of fish beyond water available through existing regulatory actions related to project operations” (ROD, p. 54). B2 actions are explicitly written into the CALFED ROD as part of this regulatory baseline. However, the new Interior proposal would use the EWA, rather than B2 water, to implement baseline restoration actions. Thus, this proposal would violate the key ROD requirement that explicitly prohibits the use of the EWA to replace existing baseline protections. Do your agencies support this fundamental revision of the EWA?

The proposal would expand the burden placed on an under-funded EWA. The proposal relies on the EWA to replace hundreds of thousands of acre-feet of B2 water that would be redirected away from upstream restoration actions. However, the EWA is already over-allocated and under-funded. Over the past several years, it has fallen far short of the level of assets required by the ROD. In addition, as some of us have noted previously, CALFED agencies have, on several occasions, chosen not to dedicate permanent water assets to the EWA. The addition of new responsibilities would significantly increase the likelihood that the EWA will fail, harming both the environment and the water users who rely on it to provide improved water supply reliability. In short, we simply do not believe that the proposed strategy to use the EWA to replace the reallocated B2 water would work. Do your agencies have a proposal to provide the additional funding – perhaps more than \$20 million in some years – that would be required by this proposal to expand dramatically the EWA? Do your agencies propose that SWP water or funds be made available, when needed, to provide these upstream restoration actions?

The proposal would threaten the viability of the EWA by expanding it to include upstream actions. The ROD states that “(t)he EWA focuses on resolving the

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fishery/water diversion conflict at the CVP/SWP Delta export pumps" (ROD, p. 54). The Interior proposal, however, would expand the EWA to include upstream restoration actions. By expanding the purpose of the EWA as defined in the ROD, the proposal would open up the EWA to requests from literally dozens of interests to help meet their upstream regulatory requirements. Has DWR or DFG surveyed water users to determine what other proposals are likely to be forthcoming to take advantage of this proposal to expand the EWA beyond the Delta? Has DWR or DFG evaluated the merits of this proposed new use of EWA water, in comparison with other potential upstream uses of EWA water? Given that water users continue to refuse to pay additional user fees to support the EWA, how would DWR and DFG determine what upstream restoration actions deserve public funding?

The proposal would shift the burden of implementing fisheries restoration actions from the CVP to the State. To date, the majority of the funding for the EWA has come from state taxpayers. Therefore, to the extent that the proposal would use the EWA to provide water for upstream restoration actions, the proposal would result in state funding being used to pay for a federal environmental rollback. We strongly oppose this proposal to shift the burden of restoring the Bay-Delta ecosystem. Do your agencies propose that state taxpayers pay the cost of this federal rollback in ecosystem restoration requirements?

The draft policy would undermine the CALFED ecosystem restoration program. State and federal taxpayers have dedicated hundreds of millions of dollars to the goal of restoring the health of the Bay-Delta ecosystem. The proposed rollback could undermine this investment of public funds. For example, this rollback could directly undermine CALFED's fisheries and riparian restoration efforts. These impacts on the CALFED Ecosystem Restoration Program have not been analyzed. Will DFG commit to undertaking an analysis of these impacts? Will your agencies support an examination by the CALFED ecosystem restoration program and the CALFED science program of these impacts?

Agencies must evaluate the cumulative impacts of regulatory rollbacks on CALFED ecosystem restoration efforts. Unfortunately, this is not the first proposed rollback of a key environmental protection in the Bay-Delta ecosystem. Since the ROD was written, the Department of Interior has already weakened the B2 policy once. Through the OCAP process, federal agencies have also weakened environmental protections for the Sacramento River. As discussed previously, state and federal agencies have failed to provide the EWA with the amount of water required by the ROD. In addition, the current EWA financing plan assumes that funding will be redirected from ecosystem restoration actions to paying for the EWA. Will your agencies support an analysis of the cumulative impacts of these actions on the CALFED ecosystem restoration program? In particular, will your agencies commit to undertake modeling to determine the specific restoration actions and the amount of water dedicated to restoration in the CALFED baseline that could be lost as a result of these rollbacks? Will your agencies commit to working with

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CALFED to develop a strategy to replace these lost assets, without further raids on ecosystem restoration funds?

The proposal undermines the CALFED ROD call for increased water dedicated to upstream restoration actions. Scientific work in recent years has reinforced the importance of upstream actions to restore the estuary's anadromous fisheries. This need is reflected in the ROD requirement for an additional 100,000 acre-feet of water per year to provide for restoration actions above the baseline (ROD, p. 36). The proposed Interior rollback would eliminate one of the most powerful tools to implement upstream flow-related fisheries restoration actions. Thus, in terms of upstream restoration actions, the proposal would move backwards, when the ROD calls for more forward progress.

The draft proposal conflicts with federal court rulings regarding the management of B2 water. The most recent Ninth Circuit ruling regarding B2 states that Interior's allocation of this water must give "effect to the hierarchy of purposes established in Section 3406(b)(2)" (Ninth Circuit Court of Appeals, June 3, 2003, p. 5). This is an area in which the existing policy and the environmental community prevailed. However, Interior's new proposal fails to meet this test. Rather than establish restoration actions as the "primary purpose" as required by the CVPIA, the new proposal would establish restoration as the lowest priority for the use of B2 water. We believe that this ruling requires Interior to devote more, not less, B2 water to fisheries restoration. (Environmental Defense explained this position in greater detail in a letter to Assistant Secretary Raley dated June 10, 2003.) The flaws in Interior's proposal are even clearer when one recognizes that the State Board has not adopted any requirements to implement its salmon doubling narrative standards. Mere compliance with the WQCP cannot "give effect" to the restoration mandate in the CVPIA. Far from implementing this ruling, the new Interior proposal ignores clear direction from the Ninth Circuit. We agree with the additional concerns expressed by The Bay Institute, in a letter dated November 29, 2004 regarding the management of the EWA and B2 water.

The proposal violates CALFED ROD requirements regarding the Delta conveyance program. The proposed action is described as an attempt to coordinate B2 operations with the EWA – a key part of the CALFED Delta management plan. This rollback is designed to allow the CVP to convey more water through the Delta to South of Delta customers. The ROD clearly states that the CALFED conveyance program must "complement ecosystem restoration" (ROD, p. 48) and that this program must avoid "adverse impacts to fisheries protection" (ROD, p. 49). By harming existing upstream restoration programs, including fisheries restoration, the proposal would violate this ROD requirement.

CALFED, other agencies and the public must be provided with adequate time for involvement prior to action on this proposal. We agree with the consensus at the past BDA meeting that state and federal agencies must do a much better job of fully involving CALFED, all state and federal agencies and the public in CALFED-related issues. The

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Interior proposal provides agencies with another opportunity to restore the relevance of CALFED. Unless state and federal agencies are fully committed to addressing the issues of fisheries restoration, upstream reservoir operation, EWA management and funding, and Delta management through CALFED, then we question the need for its continued existence. Will your agencies ask the Department of Interior for a delay in final action adequate to resolve the above questions through an open and transparent process?

We believe that the proposal contained in the November 22 letter is fatally flawed, which leads us to a final question: Will your agencies request that Interior withdraw this proposal?

We are writing to you directly because we believe that it is time for a frank and open discussion regarding the continued usefulness of the CALFED program for addressing key water management issues. We would greatly appreciate your response to the questions and concerns outlined above. In order to facilitate discussion, we request that this response be provided prior to the upcoming BDA meeting.

We thank you in advance for your responses.

Sincerely,

Barry Nelson
Natural Resources Defense Council

Lynn Barris
Butte Environmental Council

Sarah Rose
California League of Conservation
Voters

Richard Izmirian
California Sportfishing Protection
Alliance

Brian Stranko
California Trout

Jennifer Clary
Clean Water Action

Kim Delfino
Defenders of Wildlife

Bill Jennings
Deltakeeper

Spreck Rosekrans
Environmental Defense

Steve Evans
Friends of the River

Byron Leydecker
Friends of The Trinity River

Bob Raab
Marin Conservation League

Frances Spivy-Weber
Mono Lake Committee

Zeke Grader
Pacific Coast Federation of Fishermen's
Associations

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Karen Douglas
Planning and Conservation League

John Gibler
Public Citizen

John Merz
Sacramento River Preservation Trust

Sejal Choksi
San Francisco Baykeeper
Waterkeepers Northern California

Craig Breon
Santa Clara Valley Audubon Society

David Lewis
Save San Francisco Bay Association

Jim Metropulos
Sierra Club California

Conner Everts
Southern California Watershed Alliance

Felix Smith

Cc: Senator Diane Feinstein
Senator Barbara Boxer
Congressman George Miller
Congresswoman Ellen Tauscher
Senator Don Perata
Senator Mike Machado
Senator Sheila Kuehl
Assemblywoman Fran Pavley
Assemblywoman Lois Wolk
Terry Tamminen, Cal EPA
Gary Hunt, Bay-Delta Authority
Kirk Rodgers, BOR
Steve Thompson, FWS
Patrick Wright, Bay-Delta Program

CONTRA COSTA TIMES

Thursday 12/2/04

Environmentalists cry foul over newest Delta proposal

By Mike Taugher

A proposal that could reduce the amount of water the federal government delivers to California salmon fisheries is the latest sign that a decade long effort to manage the state's Delta-based water system is fracturing, environmentalists say.

The U.S. Department of Interior has proposed changes designed to ensure it does not send more water to salmon than required under a 1992 law, thereby safeguarding supplies for farmers. In addition, the proposal calls for any shortages to be offset with a different source of water that critics say is far less reliable and to date has been funded almost entirely by state taxpayers -- not the federal government.

"What they're doing is taking a meat axe to environmental protections and the CalFed plan," said Barry Nelson, a water policy analyst at the Natural Resources Defense Council. "The core strategy here is to roll back federal protection and have the state taxpayer pick it up. Not only is that inappropriate, it won't work."

Others disagreed. Westlands Water District general manager Tom Birmingham said the proposal was designed simply to ensure farmers do not lose more water than the law requires.

"If Interior doesn't change this (current) policy, there's a good likelihood someone would sue them over it," Birmingham said.

At issue is one of the most hotly fought and intricate issues in the Delta's water system: the requirement in a 1992 law co-authored by Rep. George Miller, D-Martinez, that nearly 20 percent of the water supply that Central Valley farmers were getting from the Delta be shifted to environmental purposes.

The rules that determine how to account for the 800,000 acre-feet of water have been the subject of lawsuits and twice were rewritten in ways that reduce the actual amount of water going to salmon.

Now, the Interior Department is proposing changes that critics say would further erode the amount of water for the fish.

Coincidentally, the Bush administration announced this week an 80 percent reduction in the amount of West Coast salmon habitat that will be protected under the Endangered Species Act.

"These guys are basically heading us directly for a train wreck," said Zeke Grader, executive director of the Pacific Coast Federation of Fishermen's Associations. "If some of these species continue to decline, all hell is going to break loose."

The Interior Department plan was presented in a three-page letter to state natural resources officials last week. Like a controversial proposal developed last year to rework the state's Delta-based plumbing during private meetings in Napa, the latest proposal was developed quietly and outside a 10-year-old state and federal public planning process called CalFed.

The head of CalFed, Patrick Wright, said that even though the plan was developed without his agency's cooperation, it would be reviewed by CalFed, which includes farmers, urban water agencies and environmentalists.

"Our role is just to ensure that the proposal is fully vetted and analyzed and subject to appropriate public comment," Wright said.

The state could balk at the plan, but it is unclear whether the federal government would unilaterally go forward.

Under the proposal, the beginning of the accounting year would shift from October, when a lot of water is typically released for salmon, to January. In doing so, the plan runs the risk that all 800,000 acre-feet of water could be used to meet fish habitat and water quality objectives in the spring, leaving none for salmon when they need it in the fall.

Environmentalists say that undermines the main reason that water was shifted from farms to fish in Miller's 1992 legislation: a goal to double the state's salmon fisheries.

Miller agreed, and noted this latest proposal comes just weeks after President Bush signed into law legislation clearing the way for CalFed to receive more federal funding.

"Less than a month after a bipartisan CalFed bill was signed to manage California's water resources for the whole state, the Bush Administration is again evading the law and undermining our goal of protecting the environment, the Delta, and our fisheries," Miller said in a statement. "This decision walks away from the Administration's responsibilities and promises, and again offers massive subsidized benefits to an elite group of special interests."

U.S. Bureau of Reclamation spokesman Jeff McCracken said farm customers of the federal water project would receive no more water, and there would be no reduction in water for the environment. He said the law requires 800,000 acre-feet, no more and no less.

"That's the law and the law is clear," McCracken said. "That (shifting environmental water back to farms) is not the goal of this process."

Still, the proposal from the reclamation bureau and the U.S. Fish and Wildlife Service says any shortfall would be made up with water from other sources, including CalFed's experimental "environmental water account," which was originally intended to supplement water supplies for fisheries -- after basic environmental requirements were met.



The Online Division of The Sacramento Bee

This story is taken from AP State Wire News at sacbee.com.

Feds propose changing Delta water marks for fish, farmers

By DON THOMPSON, Associated Press Writer
Published 1:15 am PST Thursday, December 2, 2004

SACRAMENTO (AP) - A proposed change in how the federal government measures water for fish in the Sacramento-San Joaquin river delta has environmental groups alarmed and California officials concerned about potential harm to wildlife habitat.

A coalition of 22 environmental groups said Wednesday the plan would shift some of the federal water burden - and potentially more than \$20 million in expenses in some years - onto the state-controlled water supply. In some years, hundreds of thousands of acre-feet of water might not be available for wildlife, the groups said.

Federal spokesmen said the plan would protect the environmental water allotment while balancing the needs of farmers and urban residents.

At issue are agreements, federal law and a federal court decision that requires the government to guarantee 800,000 acre-feet of federally controlled water goes to Delta fisheries each year. That's roughly enough water to supply 800,000 households for a year.

"This is a big, thorny issue of water in California," said Diana Jacobs, deputy director of the state Department of Fish and Game.

It all goes back to too many demands on too little water needed by fish, farmers and 22 million residents as far south as San Diego.

"If you put all these things together ... sometimes the federal contractors have to get curtailed. They feel like that's not fair," said Jacobs, referring to water districts that get their supplies through the federal system of dams, pumps and canals.

The San Luis and Delta-Mendota Water Authority, which represents San Joaquin Valley farmers and includes the Westlands Water District, the nation's largest irrigation district, sued and won a federal court decision last year that helped prompt the proposed changes.

"From our perspective, the 800,000 acre-feet allocation magically took a million, a million-two acre-feet of water from the agricultural community" by the time all the environmental agreements were tallied, said water authority spokesman Tupper Hull. The proposed changes are "encouraging, from what we've seen."

The proposal is designed to make sure the water allocation doesn't exceed 800,000 acre-feet, while guaranteeing fisheries receive that required amount, the Interior Department's

Feds propose changing Delta water marks for fish, farmers - The Sacramento Bee

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Bureau of Reclamation and Fish and Wildlife Service said in a letter last week to their two state counterparts.

Their proposal would merge two water accounts in cooperation with state agencies, and count water allocated under an earlier agreement toward the 800,000 acre-feet. It also would shift the accounting year by three months so early winter rains that refill empty reservoirs could be counted toward water reserved for wildlife.

The environmental coalition alleged the changes would violate the federal court order and the government's own plan to manage the delta.

"Not surprisingly, if you play Enron-style accounting games, you can rip off water from the environment," said Barry Nelson, a senior policy analyst with the Natural Resources Defense Council. "The accounting rules are complicated, but the effect is simple: they're ripping off fish and wildlife to benefit their usual friends."

Not so, said Reclamation spokesman Jeff McCracken.

"It doesn't take any water away from the environment. It will provide the 800,000 as required by law, and as we've always done," McCracken said. "It shifts the use of timing, but it doesn't shift the use of water."

Fish and Game's Jacobs said it's too early to tell, until the state plugs the proposed changes into its model of how the state's complicated, overtaxed plumbing system operates.

"We're concerned we don't go backwards for fish, and we can still do all the fish restoration actions we used to do," she said.

Katherine Kelly, chief of the Bay-Delta Office of the state Department of Water Resources, couldn't comment on the merits of the proposal, but said federal officials need to use a pending public comment period "to make the case that this is an improvement," as it is intended.

California Farm Bureau Federation spokesman Dave Kranz said his organization hadn't had a chance to review the proposal and couldn't comment.

On the Net:

Sacramento Fish & Wildlife Office: <http://sacramento.fws.gov>

Bureau of Reclamation: <http://www.usbr.gov>

California Department of Fish and Game: <http://www.dfg.ca.gov>

California Department of Water Resources: <http://www.dwr.water.ca.gov>

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